THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.13158 of 2006

ORDER:(per Hon'ble Sri Justice T.CH. Surya Rao)

It is represented by the learned counsel for the writ petitioner that a separate writ petition will be filed assailing the Rule 6 of the A.P. Land Grabbing (Prohibition) Rules framed under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act'). In the event of filing such an application, notwithstanding the result in the writ petition, the same can be considered. This writ petition need not wait till such a writ is filed.

The writ petition is filed assailing the order passed by the learned Special Tribunal rejecting the application filed to summon the Mandal Revenue Officer for the purpose of cross-examination. The verification report filed by the Mandal Revenue Officer seems to be the subject matter of controversy and that is the reason why Rule 6 of the Rules proposed to be assailed. The request to summon the Mandal Revenue Officer for the purpose of cross-examination can be considered or rejected without adverting to the validity or otherwise of Rule 6 of the Rules framed under the Act.

A person, who has not been examined-in-chief, is now being sought to be cross-examined by filing an application under Section 151 of the Civil Procedure Code. Sections 137 and 138 of the Indian Evidence Act, 1872

(for short 'the Evidence Act') are germane in the context to be considered. The Sections read as under:

> "**137. Examination-in-chief.**- The examination of a witness by the party who calls him shall be called his examination-in-chief.
>
> **Cross-examination.**-The examination of a witness by the adverse party shall be called his cross-examination.
>
> **Re-examination.**- The examination of a witness, subsequent to the cross-examination by the party who called him shall be called his re-examination.
>
> **"138. Order of examinations.-** Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.
>
> The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.
>
> **Direction of re-examination.**- The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

As per Section 137 of the Evidence Act that there are three stages, in the testimony of a witness namely, Examination-in-chief, Cross-examination and Re-examination. Examination of

witness-in-chief shall be by the party who call the witness and cross-examination shall be by the adversary and the re-examination of the witness subsequent to the cross-examination shall be by the party who calls him as a witness so as to clarify the ambiguity if any in his evidence occurred due to cross-examination. Section 138 of the Evidence Act, on the other hand, postulates the order of the examination. The Section mandates that witness shall be examined-in-chief first, then if adverse party desires, be cross-examined, and then if the party calls him so desires, be re-examined. A combined reading of the above excerpted provisions shows clearly the above legal position. The application filed requesting the Court to summon the Mandal Revenue Officer for cross-examination is against the mandate contained under Section 138 of the Evidence Act. There can be no cross-examination, when the witness has not been examined-in-chief. Although the above provisions of law have not been discussed by the Court below, we see no illegality in the eventual order passed by that Court in having dismissed that application.

For the above reasons, the writ petition must fail and is dismissed. No order as to costs.

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T. CH. SURYA RAO, J

Date: 11-10-2006

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G. CHANDRAIAH, J

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